

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 56845/2019

(1)	<u>REPORTABLE: NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES: NO</u>
(3)	<u>REVISED.</u>
30/11/2023 DATE	 SIGNATURE

In the matter between:

KIRSTI NIGRINI

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

PIENAAR AJ

INTRODUCTION

1. The Plaintiff is a 34 year old female who sues the defendant for damages suffered as a result of personal injuries sustained on the 6th of March 2017

wherein the insured vehicle collided with the Plaintiff who was a driver at the time.

2. The summons was issued on 2 August 2019 served on the RAF on 12 September 2019 and thereafter, RAF appointed attorneys to represent it in the matter. [1] from the papers, it is apparent that the Plaintiff served documents, including the notice of set down of the matter for trial electronically on the RAF [2]. On 11th October 2022, the Plaintiff obtained an order from this Court *per* Justice Khumalo to the effect that RAF's defence as pleaded is struck out with costs [3]. Therefore, the matter thenceforth proceed towards default judgment.
3. On 20 November 2020 an order was made in favor of the Plaintiff in respect of 100% liability for merits, and R500 000,00 in respect of General Damages and future medical expenses with an unlimited undertaking inters of the provisions of Section 17(4)(a) of the Road Accident Fund Act, Act 56 of 1996. This means the only issue which remains unresolved which I am required to adjudicate are that of the quantum of the Plaintiff's future loss of earnings/loss of income earning capacity/loss of employability [4]
4. In this action the Plaintiff amended the Particulars of Claim in terms of Rule 28 compensation from the Defendant as a result of injuries sustained during the incident in the following amounts:[5]

4.1 Loss of income

R10 000 000,00

5. I gave the Plaintiff an opportunity to file the amended Heads of Argument, which I am grateful for. [6]

EVIDENCE

6. For sake of completeness the following documents is uploaded onto Caselines as exhibits for the trial, namely:
 - 6.1 Plaintiff's experts bundle as Exhibit A
 - 6.2 Plaintiff's trial bundles as Exhibit B
 - 6.3 Plaintiff's experts' Affidavits as Exhibit C
 - 6.4 Plaintiff's amended actuary report (calculations) as Exhibit D
7. Dr Williams assessed the Plaintiff on 16 October 2018 [7]. He came to the conclusion that the Plaintiff sustained neck strain, impact injury of the chest, strain or impact of the right shoulder and straining injury of the right knee. The injury of the patient's chest appears to have healed well, with no residual symptoms. She should not have future problems from the effects of this injury. She may have neck pain in the future, in keeping with the symptoms of age-related degenerative spondylosis. The pain and discomfort affecting the right upper limb may still improve, but the patient may retain symptoms in the long term. The condition of the left knee should be assessed further, perhaps by MRI scan. At the time of the accident, she was on long leave and she has not resumed working. She should be able to work in a position where she will be doing sedentary and perhaps some light physical work. Her ability to perform tasks that would require sustained or strenuous standing and walking

or climbing of stairs, ladders and other structures or lifting, handling and carrying of heavier objects or rising her right hand above shoulder level, will be limited to some extent. The 2018 medico legal report is outdated and to assist the Court to quantify their claim.

8. Grethe Jordaan (Occupational Therapist) assessed the Plaintiff on 9 June 2020 [8] The Plaintiff was diagnosed with Post Partum Depression Disorder following the birth of her daughter in February 2019. She is currently taking a mood stabiliser(venlor). She experiences memory difficulties post accident. She experiencing word-finding difficulties post accident. She feels depressed in general. She experiences anxiety whilst traveling in a vehicle. The Client does however experience significant psychological difficulties, and it is a known fact that psychological difficulties could cause cognitive fallout, usually presenting as memory and attention difficulties. Reference is given to a Clinical Psychologist to comment on her psychological profile, treatment indicated and prognosis in this regard. Reference is also given to a Neuropsychologist for further comment with regards to the cause of her cognitive limitations. Her prognosis of her cognitive difficulties will be directly related to the causality and prognosis of the causing factor.
9. Mr C T Viljoen (Physiotherapist report) dated 29 June 2020. Since the MVA in 2017 she started experiencing intermittent left shoulder subluxations and pain. Her right knee sustained a patellofemoral joint injury and she experiences intermittent locking and patellar subluxations.
10. Mr Barend PG Maritz (Industrial Psychologist) assessed the Plaintiff on 9 June 2020 [9]. Plaintiff's highest level of qualification is that of a Bachelor

of Laws Degree, which is equivalent to an NQF Level 07. She was an IR/HR Manager at HR City. The Plaintiff noted that she returned to her pre-morbid position in April 2017 for approximately three weeks, before she resigned due to her physical limitations.

11. Mr van Deventer (employer) noted that she was a phenomenal employee, and he remembers her fondly. He explained that she was very good at what she did and she made his workload a lot lighter. He further mentioned that he wanted her to come work for him again and made her an offer, however she did not accept.
12. Since the accident occurred, she has become unemployed, and has not managed to secure alternative employment to date. This postulation is incorrect on the basis of the job offers she received post accident. The accident has evidently had a severe impact on her physical, cognitive and psychological functioning, and will continue to do so in future.
13. Mr Wim Loots prepared calculations based on pre and post accident earnings the same.

ONUS

14. The Plaintiff bears the onus to prove his or her loss. It is for the court to determine what should be paid.
15. The onus is on the Plaintiff to ensure that the court has all the necessary

and relevant evidence to assist the court in arriving at a just and fair decision.

16. With regards to loss of earnings/earning capacity there is a shortage of information of sufficient evidence. In the event of justice the Plaintiff must be granted an opportunity to supplement to there claim and in view of the foregoing, I grant the order to the issue of loss of earnings.

ORDER

17. The issue of loss of earnings is postponed sine die.

- 17.1 The Plaintiff is granted an opportunity to supplement to there claim and in view of the foregoing I grant the order to the issue of loss of earnings/ earning capacity.

- 17.2 The costs incurred for the hearing on 28 September 2023 are reserved save that if such costs are ordered in favour of the Plaintiff in due course.



PIENAAR (AJ)
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, PRETORIA

Date of hearing : 28 September 2023

Date of judgment : 1 December 2023

APPEARANCES

For the Plaintiff : Adv Cliff

Instructed by : Campbell Attorneys

For the Defendant : No appearance

Link no: 4673152

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1. Caselines 02 Pleadings
 2. Caselines 9 Application for default judgment , bundle 6
 3. Caselines 7.3 Issued Court Order
 4. Caselines 06 Draft Order/Court Order
 5. Caselines 04: Notices
 6. Caselines 9.2 Amended Heads of Argument
 7. Caselines 05: Experts, bundle 1
 8. Caselines 08: Experts, bundle 1
 9. Caselines 08: Experts, bundle 2